STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing Nos. 15,868
	)	& 15,946
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare finding that she was ineligible for ANFC, Medicaid and Food Stamp benefits for a two month period because there was no minor child in her household and a decision finding that she has been found overpaid for Food Stamp benefits.

FINDINGS OF FACT

1. The petitioner is the mother of a seventeen-year-old boy, C., who receives SSI benefits due to his own disability. The petitioner receives ANFC caretaker benefits of about $387 per month in order to care for her son. During October through December of 1998, C. worked part-time as a dishwasher at a local restaurant earning an average of about $400 per month. He did not go to school at that time because he had been expelled by the local high school. The petitioner claims she reported this income.

2. C. was convicted of DWI #1 (a misdemeanor) on November 17, 1998 and was given a suspended sentence and parole. He was picked up for violation of parole on February

2, 1999 (accused again of driving under the influence) and held in a detention center for nine days until his parole was officially revoked on February 11, 1999 at which time he was committed to the custody of the Department of Corrections for a period not to exceed ninety days.

3. Although C. was sentenced as an adult, he could not be held as an adult in the general prison population due to his status as a juvenile convicted of a misdemeanor. Instead of incarceration in a correctional facility, C. was furloughed to a private apartment unit paid for by Corrections where he was expected to live alone, care for himself, and adhere to strict rules and regulations. These regulations included reporting and close monitoring of his activities, whereabouts, and visitors. While the apartment was free to him, he was expected to provide his own food, medical care and transportation. He was referred by Corrections to the Department of Social Welfare for assistance with these needs.

4. C. was also required to attend high school at a site in the Corrections Department, to attend AA meetings, and to continue with his part-time employment. All of his appointments were submitted in advance in writing and pre-approved by Corrections. Daily visits from his mother were approved as part of his schedule. He was in the furlough apartment from February 11 through April 7 and fulfilled all

of the requirements, including attendance at school three days per week for three hours each day.

5. The petitioner reported to the Department of Social Welfare on February 17, 1999 that her son was in the furlough apartment and that he was expected to return to her home (which at that time was a motel room) before April. The next day, a notice was mailed to the petitioner telling her that her ANFC would be terminated on March 1, 1999 because her son was no longer in her home. Her loss of ANFC meant that she would no longer be eligible for Medicaid. She was not notified that her son would be taken off of her Food Stamp grant; in fact, she was informed that her Food Stamps would increase because her husband (and his income) had left the household. The petitioner appealed the loss of her ANFC and Medicaid benefits which continued pending hearing.

6. Throughout her son's term in the F.S.U. (furlough support unit) apartment, the petitioner, who lived about fifteen miles away, visited him daily. Since his license was suspended, she transported him to work, the laundromat, and the grocery store. On March 1, 1999, she purchased $118 worth of food from her own money and placed it in his apartment. She also took him to McDonald’s for meals. During this time she transported him to a hospital for emergency medical care, that was authorized by her, although she had to get permission

from Corrections to drive him there. She also continued to be her son's representative payee for his SSI benefits.

7. Sometime in March of 1999, the eligibility specialist who handles the petitioner's case got word from DET that during that month C. was working part-time as a dishwasher and that he had worked for the same employer in October, November and December of 1998. The worker requested wage verification from the employer and found that C. had earned $381.90 in October, $468.06 in November, $326.32 in December, and $252.60 in March of 1999. The worker claims that she had no record that the petitioner had ever reported that income to her. The worker used this information to recalculate the petitioner's benefits for the time period at issue and concluded that the petitioner should have received no food stamps during October and November of 1998 and only $10 per month in December 1998 and March of 1999. The petitioner had actually received food stamps in the amount of $113 in October, $156 in November, $156 in December and $230 in March. The total overpaid was $635. The petitioner was notified of the Department's decision on April 12, 1999. She appealed that decision. The petitioner has not yet been mailed a notice recalculating her benefits for these periods in the ANFC program. She does dispute inclusion of her son's income in her household but does not dispute the amounts of his income or the amounts she received in food stamps.

8. At the hearing scheduled for July 13, 1999 (one of several in this case), the Department informed the petitioner for the first time that her son should not have been a part of her Food Stamp household during the period of his committal to Corrections and that she was considered overpaid for March, 1999, based on that reason as well. The petitioner was informed at that time that her son should have applied as his own separate Food Stamp household. However, the petitioner never received any notice of the Food Stamp termination in writing nor any calculation of what the Department felt she should be paid as an individual Food Stamp household. In response to the hearing officer's request to clear up this discrepancy, the Department stated that since C. should not have been in the Food Stamp household for March, it would not include C.'s income in calculating the petitioner's eligibility while her son was in the F.S.U. However, no new figures were provided as to the actual amounts due to the petitioner as a single household for this period. The Department asked that the petitioner be found overpaid in ANFC as well for the period her son was in the F.S.U., but supplied no figures as to the amount of the overpayment claimed.

9. Since Food Stamps overpaid must be recovered regardless of fault, it is not necessary to determine whether the failure to include C.'s income during October, November

and December of 1998 in the Food stamp calculations was household or Department error.

ORDER

The decision of the Department regarding the petitioner's eligibility to receive ANFC and Food Stamps for the period when her son was in the F.S.U. program is reversed and benefits for this time period shall be calculated on the basis of a two-person household without the inclusion of the son's work earnings. The decision of the Department finding that the petitioner was overpaid Food Stamps in October, November, and December of 1998 due to the uncounted earned income of her son C. in the amount of $415 is affirmed.

REASONS

As a general condition of eligibility, dependent children must be living with a relative in a residence maintained as a home by such relative in order for that relative to receive ANFC assistance. W.A.M. § 2303.1. To insure this condition is met, the regulations require caretakers to report the physical absence of children from their homes and establish a test to determine if assistance can continue:

Family Separation

> A recipient of ANFC assistance, or an individual acting on behalf of a caretaker unable to do so, shall notify the District Director of any physical separation of the caretaker and child(ren) which continues or is expected

> to continue for 30 days or more. Eligibility shall continue when the following conditions are met:
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> 1. The recipient relative or caretaker or, in cases of subsequent separation of parents receiving assistance as a two parent family, the other recipient parent continues or supervises continuing care and supervision of eligible child(ren); and
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> 2. A home is maintained for the children or for return of the recipient relative or caretaker within six months; and
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> 3. Eligible family members have continuing financial need.
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> . . .
>
> W.A.M. 2224

The petitioner did report the absence of her son from her home, which she expected to be more than thirty days but less than ninety. The boy's absence was evaluated by the Department and it was determined that his situation did not meet the criterion in paragraph one of the above test. The Department reasoned that the Department of Corrections had "legal responsibility" for her son during his incarceration and that, as such, the petitioner had no obligation to continue to oversee the care and supervision of her minor son.

The Vermont statute entitled "Supervision of Adult Inmates at the Correctional Facilities" does provide that persons convicted of an offense shall be committed to the "custody of the commissioner" of the Department of Corrections for a term of imprisonment. 28 V.S.A. § 701(a). As a general proposition, the commissioner is required to "establish, maintain and administer such state correctional facilities and

programs as may be required for the custody, control, correctional treatment and rehabilitation of committed persons and for the safekeeping of such other persons as may be committed to the department in accordance with law." 28 V.S.A. § 101 (1). There can be no doubt that the statute requires the commissioner to have complete control over the committed person's whereabouts and allowed activities. Beyond that, the statute requires the commissioner to provide wholesome and nutritious food, medical care, and adequate sanitary conditions to those who are in correctional facilities (see 28 V.S.A. §. 801 et seq.) but does not specify whether that same "care" is to be given to a person in a furlough apartment who has kitchen facilities and is allowed to earn his own income. Neither does the statute spell out any duty by the Commissioner to assume parental functions for minors who are committed for incarceration.[1]

There is no discussion in the statute cited by the Department on the incarceration of adult offenders as to the continuing obligations of parents of minors tried and sentenced as adults. Clearly, the petitioner's parental relationship with her child was not severed by his incarceration, and her general rights as his guardian—even in his physical absence—remain because only a juvenile court can temporarily or permanently transfer those rights. See 33

[1] Another statutory section governing juvenile proceedings provides only that minors convicted of misdemeanors in the criminal justice courts may

V.S.A. § 5501. However, the fact that the petitioner at least remained the guardian (the person who has the ultimate authority over legal, spiritual, and medical issues for the child) is not dispositive of this case unless she either continued to provide daily care and supervision for him or oversaw such care and supervision.

At first blush, it is hard to imagine that any child who is incarcerated would have any need for continuing day to day care by his parent. Certainly if this child were placed in a traditional correctional facility he would have been fed, clothed, transported as necessary and had all his medical and other physical needs cared for within that facility because the law requires it. 28 V.S.A. § 801 et seq. This child was not placed in such a facility but rather in an apartment that was operated (correctly or incorrectly) under different rules. It is therefore necessary to analyze whether under the scenario of the furlough apartment the child, and by extension the parent, had any continuing obligation to provide for his own needs.

There is no dispute that the DOC housed the petitioner's child in order to confine him as a means of punishment for him and protection of the public. DOC also directed and closely monitored his daily activities for the above reasons and also to rehabilitate him through requiring attendance at school and part-time work. To that extent, some of the parental care and

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not be housed with adult offenders. 33 V.S.A. § 5530.

supervision that the petitioner would usually provide to her child was taken out of her hands. On the other hand, the child was not provided with food, medical care, transportation, clothing care or personal needs by DOC. He was expected to provide this for himself by applying for public assistance or through his earnings. Nevertheless, as he was still a minor, the responsibility for providing these necessities ultimately fell to his parent. As it turned out, his parent, the petitioner, actually did organize and provide for his food, transportation, medical care, clothing, and personal needs and also continued to handle his SSI checks and authorize emergency medical care for him during the time he was in the "custody" of DOC.

The issue brought before the Board by this case, then, is whether a parent who continues to provide a significant degree of care and supervision to her child, but who has also been deprived of a goodly portion of her parental duty to supervise her child by a criminal court, should be found to have met the criterion in paragraph 1 of W.A.M. 2224 which would allow her to continue to receive public assistance for this child during his temporary absence from her home. The regulation itself does not discuss the degree to which the parent must continue or supervise "continuing care and supervision" of the child when some of that obligation is shifted to another entity. Given the lack of guidance in the actual wording of the regulation, it is necessary to examine whether the purposes of

the ANFC program would be supported or thwarted by deciding that the petitioner should receive ANFC if she continues to provide some care and supervision for her son.

Among the goals of the Vermont ANFC program are the support of "parental nurturing" and "parental responsibility, both custodial and noncustodial." W.A.M. § 2200 B.(3) and (4). Payment to an individual who continues to need financial support to carry out parental nurturing and responsibility roles would promote these goals of the program. The petitioner's obligations in this unique situation are arguably more compelling than that of the typical parent who continues to receive aid under this regulation—one who has custody but who has allowed a non-custodial parent or other individual to temporarily provide supervision and necessities to the child.[2] It cannot be said that payments to the parent in a circumstance where she continues to nurture and carry out her parental responsibilities to her child, including care of the body and supervision of his transportation needs is contrary to the purposes of the program.

Frequently in "shared custody" type cases, the Department has raised an objection to payment of either custodian because the potential exists for two persons to claim the ANFC grant, a claim which it interprets as inconsistent with its

[2] See E.G., Fair Hearing No. 15,433 where the tie-in to criterion one was found to be the parent's right to demand the immediate return of the child at any time--the "supervision of care and supervision", even though he provided no actual direct care or supervision.

regulations contemplating one ANFC payee. That is not a concern in this case because there are not two parents, or even two individuals (as a minor, the son cannot apply for himself), who could compete for this grant. While the Commissioner of Social and Rehabilitation Services can apply for benefits for children in its custody (see W.A.M. § 2302.1), there is nothing in the regulations that authorizes the Commissioner of Corrections to make a similar application. Therefore, there is no potential for two persons claiming financial assistance for this child.

For these reasons, it is consistent with the purposes of the ANFC program to interpret the above regulation as allowing payment to a parent who continues to provide direct care for a child who is officially in the "custody" of the Department of Corrections. It would be incorrect, however, to interpret this decision as holding that every parent with a child in such "custody" is entitled to a similar benefit. Each case requires a careful analysis of the parent’s continuing obligation to provide care and supervision to any child who is out of the home on a temporary basis. In this case, the parent should have continued to receive the ANFC grant and the Department's decision to the contrary cannot be upheld.

The Food Stamp program pays benefits to a “household” which is defined as any individuals, including parents and children under the age of 21, who are "living together" and who "customarily purchase food and prepare meals together for

home consumption." F.S.M. 273.1(a)(1).[3] The regulations do not address the temporary physical absence of a household member from the place considered the home. Again, in this peculiar circumstance it must be considered whether or not this mother and minor son could be considered to be "living together" as family members even though the son has been confined in a separate building several miles from the mother. In order to do so, it makes sense to adopt the "care and supervision" language of the ANFC statute to determine whether the mother's obligations to provide food to her minor son continued as if they were living together under the same roof.

The facts clearly show that no one else except this parent was assuming the responsibility for feeding this boy. She transported him for food shopping and brought groceries she paid for to the unit. No one else was applying for Food Stamps for him. While the Department maintains that he could have received Food Stamps as a separate household, his mother would have had to apply for him and would have received his benefits since he is a minor. See F.S.M. 273.1(f)(1). This argument places form over substance and would likely have resulted in an even larger combined payment for the two separate households.[4] It cannot be concluded that an error

[3] ANFC eligibility factors regarding age do not apply to Food Stamps.

[4] Even if the Department was correct that the two should have been separate households, the petitioner had absolutely no way of knowing during the relevant time period that the Department thought she should not be getting Food Stamps for herself and her son. Thus she had no way of knowing that she needed to apply for him as a separate household. The Department argues

was made in considering these two family members a single household under the regulations because the mother continued to exercise care for her child in his incarceration setting including feeding him as if he were in her home (a motel room several miles away). Thus, she should have continued to receive Food Stamp benefits for him.

This matter cannot be concluded without a comment on the Department's serious lack of notice to the petitioner in this situation as required by W.A.M. 2228. While it is true that none of her benefits were closed because she appealed the ANFC denial, the Department's failure to inform her of its belief that her Food Stamp benefits should have been closed during March and April of 1999[5] severely prejudiced the petitioner with regard to her taking other actions at that time, like applying for separate household status for her son. (See footnote 3.) The Department has acknowledged that this failure was an error on its part but still has not sent a formal notice of Food Stamp closure. Because the petitioner indicated that she understood the issue in this matter and was

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that the son was told he could apply to welfare for his needs by the Correction office and thus was put on notice that he could be a separate Food Stamp household. This was certainly no notice to the petitioner and even if it were, why would the two bother to reapply for benefits which they were already receiving and which they had no reason to expect were being paid to them in error? If the Department wants to correct this matter to do what it feels should have been done by splitting this family into two separate households it could have taken such action, recalculated their benefits and rectified the matter. However, the Department has declined to take such action.

[5] The Department statement in its brief that they should have been closed for March, April, May and June of 1999 is not explained since the boy indisputably returned home on April 7, 1999. Again, a formal notice would

given time to respond to the Department's oral representations, the hearing officer did proceed to hear the matter.[6]

Finally, the issue of the Food Stamp overpayment must be resolved in favor of the Department for the months of October, November and December of 1998. The petitioner is required to report her son's income (see F.S.M. 273.12(a)(1)(i)) and the Department is required to evaluate it. Regardless of whether the petitioner reported it and the Department failed to include it, or whether the petitioner misunderstood the requirement or forgot to report it, the Department is required to recover any amounts which are overpaid by reducing the petitioner's future grant at a rate of 10% or $10, whichever is more. F.S.M. 273.18(a)(1) and (b)(1) and (d). The petitioner's son's income is includible in calculating benefits unless he was also a part-time student when he earned the money. F.S.M. 273.9(c)(7). The petitioner admitted that her son had been expelled from his regular high school this year and was not attending during 1998. Thus, the Department correctly included the son's income for the last three months of 1998 in calculating what the family should have been paid.

By March of 1999, when the son became re-employed, however, he was attending school at the Corrections office.

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have cleared up this discrepancy.

[6] The Department's statement in one of its briefs that the Food Stamps should have been closed for March, April, May and June of 1999 is not

Although he was only attending nine hours per week, that was the full amount which was required of him. It must be concluded at that point that he was attending school at least half time, if not full-time, as defined by his special school. In such a situation, the petitioner is entitled to the total exclusion of his $252.60 part-time income for the month of March. It cannot be concluded that the family was overpaid during March of 1999 based on the son's income for that month.[7]

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explained since the boy indisputably returned home on April 7, 1999. Again, a formal notice would have cleared up this confusion.

[7] Another confusing aspect of this case is that the claim sent to the petitioner for the March Food Stamp amount said that the family's net income was $881.77 per month when none had been reported. The verification supplied at hearing by the Department showed that the boy had only made $252.60 per month. Since the verification was not dated it is not possible to tell if it is only for part of the month. If the total he made for the month was $881.77 the whole amount should be excluded. If that amount represents someone else's income as well, which was not reported, the petitioner needs to be notified of that fact before an adjustment can be made to the amount of Food stamps paid for that month.